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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,105	02/22/2002	Hiroyuki Adachi	111232	1162

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EXAMINER

RUHL, DENNIS WILLIAM

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03/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/980,105	Applicant(s) ADACHI ET AL.	
	Examiner Dennis Ruhl	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/3/08 has been entered.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1,5,6,8,10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 1,6,8, the language “and an order in which the refueling vehicle is to be dispatched to the construction machine to refuel the construction machine” is indefinite. What does this mean? If there is only one refueling vehicle and only one construction machine, what order is there that is to be determined? This does not make any sense and is indefinite. It is not clear what the “order” is that is being referred to in these claims.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1,5,6,8,10-16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Apsell et al. (6292724) in view of Kane et al. (6078850) and further in view of Smith et al. (5835376).

For claims 1,8, Apsell discloses a method and system where construction equipment (construction vehicles) are monitored and tracked via GPS as well as being monitored with various vehicle sensors. The construction equipment (vehicles E) have a GPS unit that determines vehicle location and there is a transmitter (the transponders T) that sends the location information to a central base station (ground station GS). The base station has a receiver that receives the information from the construction machine. The communication means is S and/or R. Both S and R allow for bidirectional communication to occur between the base station and the individual construction machines. The vehicles also have various sensors that relay information concerning

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the vehicle to the transponder for transmission to the base station. One of the sensors is disclosed as being a fuel level sensor. See figure 4. Also see column 4, line 50 to column 5, line 39, where the fuel sensor is disclosed along with the reasoning as to why this variable is important to the equipment operator. *The operation wants to know how much fuel is left in the vehicles so that it can be determined whether or not a truck needs to be sent out to refuel the vehicle and if so, how much fuel is needed.* In column 5, lines 40-49 it is disclosed that the sensors may also be provided with the ability to activate the transponder in the event that an alarm condition is detected. The alarm condition can be operational parameters being out of range or safe values, or out of ranges for equipment location or out of ranges for allowed times of operation, etc..

Not disclosed in Apsell is that if the fuel level drops below a certain level, information indicating the fuel level is transmitted to the base station by the transmitter. In addressing this issue the examiner takes "official notice" that it is old and well known in the art of vehicles to have a low fuel indicator (usually a light and a noise) to indicate to the driver that the vehicle is low on fuel. This indication is done when the fuel level drops below a certain value. This is done to alert the operator that the fuel level is low and allows one to refuel in a timely manner so that you do not run out of fuel. This feature is old and well known in the art. Taking this fact into account, and in view of the disclosure in column 5, lines 40-49 concerning the sensors and alarm conditions pertaining to operational parameters being out of range or safe values, one of ordinary skill in the art at the time the invention was made would have found it obvious to modify Apsell to detect when the fuel level (an operational parameter) of a vehicle drops below

a certain value, and to transmit that fact to the base station, so that it can be determined whether or not a fuel truck needs to be sent out, and if so, how much fuel is needed (from column 4, lines 50-56). An alert of low fuel level is already known in the art. Based on this fact and the teaching of Apsell that operational parameter alarm conditions for the sensors are transmitted to the base station, one of ordinary skill in the art would have been motivated to modify Apsell as set forth by the examiner. See column 3, line 64 to column 4, line 2, where it is disclosed that location information is transmitted as claimed to the base station. The base station is also provided with a transmitter (communication relay S, see figure 1). See column 5, lines 45-49 where it is disclosed that special requests can be made to the transponder to transmit data to the base station. This request is sent through the base station side transmitter.

Not disclosed is that the base station transmitter is configured to transmit information relating to a request for refueling (can be other than the request itself) and the location information to a tie-up station with a tie-up station device.

In support of the obviousness rejection in view of Kane, the examiner takes “official notice” of the fact that it is very well known that there are companies in existence that provide mobile refueling services for customers, such as construction machine operators and other types of equipment operators. One such company is “Streicher Mobile Fueling, Inc”. They provide mobile refueling services for vehicles and equipment. It is known in the art of vehicles and construction equipment that there are companies that can be called upon to send out a truck to a given location to refuel a vehicle or piece of equipment for a customer. One of ordinary skill in the art is aware of

this fact. The examiner also again notes that Apsell discloses that with respect to the fuel level of construction machines, "*The operation wants to know how much fuel is left in the vehicles so that it can be determined whether or not a truck needs to be sent out to refuel the vehicle and if so, how much fuel is needed.*"

Kane discloses a system and method for fuel management of trains. Kane discloses that there is a central station 3 (fuel management center) that has a processor that receives fuel data and GPS location data from the trains (column 4, lines 24-30). Also see column 8, lines 17-45 where it is disclosed that the GPS location and fuel information is transmitted to the central station for processing. The central station 3 (fuel management center) equates to the claimed base station of Apsell. The processor at the central station 3 (fuel management center) also has software (a selector) that polls various refueling locations (fixed 2a and mobile 2b) for pricing information for fuel, and based on the received fuel pricing information, the GPS location information, and the fuel level information, determines the best location or business for refueling (fixed 2a or mobile 2b). This includes the sending out of a fuel truck to a particular location. See column 4, lines 31-53 as well as the entire patent to Kane. Also see column 4, lines 36-45 where it is disclosed that there is two way communication between the central station 3 and the various refueling locations (refueling businesses or the claimed tie up stations). This requires that the refueling businesses (the claimed tie up stations) have a tie up station side device as claimed. One of ordinary skill in the art is clearly concerned with the pricing they would pay for fuel, as well as getting fuel in an expeditious manner, so for economic reasons and due to market forces, a business

owner would want to try to find the best price they can for their fuel, subject to location limitations of course. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base station of Apsell with a selector software program as disclosed by Kane that can poll various mobile vehicle refueling locations (businesses) for pricing information so that it can be determined which mobile refueling business (tie up station) is the cheapest based on location and price so that a request for refueling can be sent out. It then follows that it would have been obvious to send out a request to refuel a construction machine to the selected tie up station, where the request would include the location of the construction machine and the fuel information so that it is known where the mobile refueling vehicle is supposed to go and how much fuel is being asked for. As is discussed in column 8, lines 17-45 of Kane, the central station (base station of Apsell) receives GPS location information and fuel information. To be able to send out a mobile refueling truck to the construction equipment would require that the location information be sent to the tie up station via the tie up station side device so that they know the location they are supposed to go to. This modification to Apsell would allow the cost savings discussed by Kane to be obtained by the system of Apsell, the results of which are predictable. The examiner views the claim as a whole as simply taking the business model for refueling trains disclosed by Kane and applying it to construction equipment (vehicles) to obtain the results that one of ordinary skill in the art would expect to be realized, where the idea of having mobile refueling vehicles for construction equipment is already known in the art, which equates to the mobile refueling locations 2b in Kane. The process set forth by

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Kane can easily be practiced with vehicles and construction equipment with the same predictable results being obtained, and it is known in the art that there are vehicle and equipment mobile refueling companies that provide mobile refueling services, so one of ordinary skill in the art would have found it obvious to apply this business model to the construction equipment industry with respect to refueling of construction machines so that its benefits could be realized. Once the refueling location (tie up station) has been determined, at that point, it would have been obvious to one of ordinary skill in the art at the time the invention was made to request that a truck be sent out to refuel the construction machine so work can continue. This step naturally follows the step of choosing a refueling location or business (tie up station).

With respect to the limitation that the tie up station side device performs processing to determine a refueling vehicle to be dispatched to the construction machine, and an order, this is essentially the act of dispatching a vehicle to perform the requested service, which is not disclosed by the combination of Apsell and Kane. This is claiming that the tie up station side device acts like a dispatching service, which is known in the art. Smith discloses a dispatching system that can dispatch vehicles to satisfy service requests. Smith discloses that the system is automated and that the system will use various types of data (location information, whether a vehicle is currently available or not, etc.) to dispatch a vehicle to handle a service request. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tie up station with a dispatching system as disclosed by Smith so that they

can dispatch their refueling vehicles in an efficient manner as is disclosed by Smith to handle the received service requests.

Also, in addition to the above obviousness analysis and as an additional reason for the finding of obviousness, based on the combination of Apsell and Kane so far, the missing element of the tie up station device having a dispatching ability is an element found in Smith. This element is known in the prior art but is not in the combination as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately. The dispatching system of Smith when combined with the prior art will operate just as it does in Smith alone. The results of being able to efficiently dispatch a refueling vehicle to a construction machine are predictable and would be expected when the references are combined. It would have been obvious to include the dispatching feature of Smith in the tie up station side device because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

For claim 5, applicant has claimed that the base station transmitter is configured to send the information relating to the residual fuel amount to a user side receiver. This seems to be reciting that the transmitter is configured to send back the same information it received from the construction machine. This is not specifically disclosed in the prior art combination. Once a refueling provider has been selected (after the

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polling takes place), it would have been obvious to one of ordinary skill in the art to send a communication to the operator of the construction machine (via a user side receiver) so that they know if and when they are going to be refueled. Common sense would dictate that once you send out a request to refuel a given machine, you would want to let the operator know so that they are informed as to the situation with their fuel. One would not want an operator to move the machine to a new location without realizing that a fuel truck is on the way to refuel the construction machine. One of ordinary skill in the art would have found this obvious.

For claims 8, in addition to that disclosed above, and claims 10,11,13, applicant has claimed that the selection of a refueling station is based on information relating to refueling and a predetermined criteria. The claimed information relating to refueling and/or the predetermined criteria can be the fuel per unit price that is being polled for, how much fuel is needed and/or the location information of the refueling providers that is taken into account or can be other information as this term is broad and is not limited to any specific information. With respect to the predetermined criteria, the selector must choose from a list of available providers. This is inherent to the prior art rejection.

Polling of refueling providers cannot occur by using computer software if there is not a database that has the stored providers, so that the software knows whom to poll. The selection of a refueling provider is inherently based on a pre-stored list in a database as claimed.

For claims 12,16, the selection of a fuel provider is done by taking into account location as claimed. This is part of the process taught by Kane and is therefore part of the combination as set forth by the examiner.

For claims 14,15, with respect to the “invoice creating unit” that creates an invoice, the prior art does not disclose this feature. In Apsell, information relating to the construction machines (such as fuel levels) is received at the base station so that the owner can efficiently and better manage and service their equipment. The data received at the base station is important to the owner of the company that owns the fleet of construction machines. In view of this fact, one of ordinary skill in the art at the time the invention was made would have been motivated to record and store the data relating to the construction machines and the fuel that they receive, so that the owner has a record on file of the usage of certain machines including fuel usage data. With The claimed invoice can simply be a document that specifies how much fuel a given machine needs or was given (for accounting purposes). One of ordinary skill in the art at the time the invention was made would have found it obvious to provide the base station computer system of Apsell with a invoice creating unit that can create a document that shows how much fuel a given construction machine was given and that sends the invoice to a accounting storage medium (customer side device) for recordkeeping purposes. This is something that one of ordinary skill in the art would have found as obvious based on the level of ordinary skill in the art and based on the teachings of Apsell and the information that Apsell is concerned with (fuel). One of ordinary skill in the art is clearly concerned with invoicing the fuel purchases for

respective machines, which is more or less performing an accounting function, something that is very well known in the art.

For claim 6, Apsell discloses a method and system where construction equipment (construction vehicles) are monitored and tracked via GPS as well as being monitored with various vehicle sensors. The construction equipment (vehicles E) have a GPS unit that determines vehicle location and there is a transmitter (the transponders T) that sends the location information to a central base station (ground station GS). The base station has a receiver that receives the information from the construction machine. The communication means is S and/or R. Both S and R allow for bidirectional communication to occur between the base station and the individual construction machines. The vehicles also have various sensors that relay information concerning the vehicle to the transponder for transmission to the base station. One of the sensors is disclosed as being a fuel level sensor. See figure 4. Also see column 4, line 50 to column 5, line 39, where the fuel sensor is disclosed along with the reasoning as to why this variable is important to the equipment operator. *The operation wants to know how much fuel is left in the vehicles so that it can be determined whether or not a truck needs to be sent out to refuel the vehicle and if so, how much fuel is needed.* In column 5, lines 40-49 it is disclosed that the sensors may also be provided with the ability to activate the transponder in the event that an alarm condition is detected. The alarm condition can be operational parameters being out of range or safe values, or out of ranges for equipment location or out of ranges for allowed times of operation, etc..

Not disclosed is that the base station has a determination unit that determines whether or not the received fuel level is below a specified value. In addressing this issue the examiner takes "official notice" that it is old and well known in the art of vehicles to have a low fuel indicator (usually a light and a noise) to indicate to the driver that the vehicle is low on fuel. This indication is done when the fuel level drops below a certain value. This is done to alert the operator that the fuel level is low and allows one to refuel in a timely manner so that you do not run out of fuel. This feature is old and well known in the art. Taking into account that the reason the fuel level is being transmitted to the base station is so that it can be determined when certain vehicles need refueling, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base station with a determination unit (software program) that determines whether or not the received fuel level is below a specified value, so that the operator can be alerted to vehicles that have low fuel levels and that will need refueling in the near future. This is the reason the fuel level is being tracked, so that you can ensure the vehicles do not run out of fuel. The base station is also provided with a transmitter (communication relay S, see figure 1). See column 5, lines 45-49 where it is disclosed that special requests can be made to the transponder to transmit data to the base station. This request is sent through the base station side transmitter. The base station transmitter is capable of sending out requests in the form of data.

Not disclosed is that the base station transmitter is configured to transmit information relating to a request for refueling (can be other than the request itself) and the location information to a tie-up station with a tie-up station device.

In support of the obviousness rejection in view of Kane, the examiner takes “official notice” of the fact that it is very well known that there are companies in existence that provide mobile refueling services for customers, such as construction machine operators and other types of equipment operators. One such company is “Streicher Mobile Fueling, Inc”. They provide mobile refueling services for vehicles and equipment. It is known in the art of vehicles and construction equipment that there are companies that can be called upon to send out a truck to a given location to refuel a vehicle or piece of equipment for a customer. One of ordinary skill in the art is aware of this fact. The examiner also again notes that Apsell discloses that with respect to the fuel level of construction machines, *"The operation wants to know how much fuel is left in the vehicles so that it can be determined whether or not a truck needs to be sent out to refuel the vehicle and if so, how much fuel is needed."*

Kane discloses a system and method for fuel management of trains. Kane discloses that there is a central station 3 (fuel management center) that has a processor that receives fuel data and GPS location data from the trains (column 4, lines 24-30). Also see column 8, lines 17-45 where it is disclosed that the GPS location and fuel information is transmitted to the central station for processing. The central station 3 (fuel management center) equates to the claimed base station of Apsell. The processor at the central station 3 (fuel management center) also has software (a selector) that

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polls various refueling locations (fixed 2a and mobile 2b) for pricing information for fuel, and based on the received fuel pricing information, the GPS location information, and the fuel level information, determines the best location or business for refueling (fixed 2a or mobile 2b). This includes the sending out of a fuel truck to a particular location. See column 4, lines 31-53 as well as the entire patent to Kane. Also see column 4, lines 36-45 where it is disclosed that there is two way communication between the central station 3 and the various refueling locations (refueling businesses or the claimed tie up stations). This requires that the refueling businesses (the claimed tie up stations) have a tie up station side device as claimed. One of ordinary skill in the art is clearly concerned with the pricing they would pay for fuel, as well as getting fuel in an expeditious manner, so for economic reasons and due to market forces, a business owner would want to try to find the best price they can for their fuel, subject to location limitations of course. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base station of Apsell with a selector software program as disclosed by Kane that can poll various mobile vehicle refueling locations (businesses) for pricing information so that it can be determined which mobile refueling business (tie up station) is the cheapest based on location and price so that a request for refueling can be sent out. It then follows that it would have been obvious to send out a request to refuel a construction machine to the selected tie up station, where the request would include the location of the construction machine and the fuel information so that it is known where the mobile refueling vehicle is supposed to go and how much fuel is being asked for. As is discussed in column 8, lines 17-45 of Kane, the

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central station (base station of Apsell) receives GPS location information and fuel information. To be able to send out a mobile refueling truck to the construction equipment would require that the location information be sent to the tie up station via the tie up station side device so that they know the location they are supposed to go to. This modification to Apsell would allow the cost savings discussed by Kane to be obtained by the system of Apsell, the results of which are predictable. The examiner views the claim as a whole as simply taking the business model for refueling trains disclosed by Kane and applying it to construction equipment (vehicles) to obtain the results that one of ordinary skill in the art would expect to be realized, where the idea of having mobile refueling vehicles for construction equipment is already known in the art, which equates to the mobile refueling locations 2b in Kane. The process set forth by Kane can easily be practiced with vehicles and construction equipment with the same predictable results being obtained, and it is known in the art that there are vehicle and equipment mobile refueling companies that provide mobile refueling services, so one of ordinary skill in the art would have found it obvious to apply this business model to the construction equipment industry with respect to refueling of construction machines so that its benefits could be realized. Once the refueling location (tie up station) has been determined, at that point, it would have been obvious to one of ordinary skill in the art at the time the invention was made to request that a truck be sent out to refuel the construction machine so work can continue. This step naturally follows the step of choosing a refueling location or business (tie up station).

With respect to the limitation that the tie up station side device performs processing to determine a refueling vehicle to be dispatched to the construction machine, and an order, this is essentially the act of dispatching a vehicle to perform the requested service, which is not disclosed by the combination of Apsell and Kane. This is claiming that the tie up station side device acts like a dispatching service, which is known in the art. Smith discloses a dispatching system that can dispatch vehicles to satisfy service requests. Smith discloses that the system is automated and that the system will use various types of data (location information, whether a vehicle is currently available or not, etc.) to dispatch a vehicle to handle a service request. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tie up station with a dispatching system as disclosed by Smith so that they can dispatch their refueling vehicles in an efficient manner as is disclosed by Smith to handle the received service requests.

Also, in addition to the above obviousness analysis and as an additional reason for the finding of obviousness, based on the combination of Apsell and Kane so far, the missing element of the tie up station device having a dispatching ability is an element found in Smith. This element is known in the prior art but is not in the combination as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately. The dispatching system of Smith when combined with the prior art will operate just as it does in Smith alone. The results of being able to efficiently dispatch a refueling vehicle to a construction machine are predictable and

would be expected when the references are combined. It would have been obvious to include the dispatching feature of Smith in the tie up station side device because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

7. Applicant's arguments filed 1/3/08 have been fully considered but they are not persuasive.

With respect to applicant's comments regarding Kane having a controller on board the vehicle for storing information regarding location and fuel stations, this is not disputed; however, Kane also discloses that the actions of polling fuel locations can be done at the central station 3, which equates to the base station of Apsell. Applicant's comment is correct but is ignoring the fact that Kane discloses that the central station can also perform the polling of fuel stations and the other disclosed actions.

Applicant has argued that the prior art as combined cannot "*reasonably be considered to correspond to any feature to determine a refueling vehicle to be dispatched to the construction machine and an order in which the refueling vehicle is to be dispatched, or to perform processing to determine whether there is a request for refueling of the construction machine and to output an instruction to a refueling vehicle to be dispatched to the construction machine to refuel the construction machine if there is a request for refueling of the construction machine, as positively recited, among other*

features, in independent claims 1, 6 and 8.” The prior art rejection of record addresses these newly added limitations and the argument is moot based on a new grounds of rejection for the claims.

Applicant has stated that the office action improperly makes liberal use of “official notice” and provides only a conclusionary analysis regarding the combining of the references. Applicant has stated that there is no objective evidence of record that supports why one would have been motivated to combine the references. Applicant seems to allege that the examiner has not explained the reasoning for obviousness and has not provided a reasoned and articulated explanation for the applicant to consider. The examiner feels that applicant is not addressing the rejection of record and is ignoring the fact that the examiner has made a very clear and lengthy articulated explanation to support the obviousness rejection. As far as combining the references goes, Apsell teaches that it is known in the art to send out trucks to refuel construction equipment. The examiner took official notice of the fact that there are companies in existence that provide mobile refueling services to vehicles and various types of equipment, and the examiner cited prior art to prove that this assertion is fact. Kane addresses the issue of polling mobile refueling businesses (mobile fuel trucks) to find the most cost effective business to use for refueling a train. Kane deals with and discloses mobile refueling vehicles which are analogous to what is disclosed by Apsell and known in the art as proven by the examiner. All of these issues are stated in the rejection and are simply being ignored by applicant and not addressed on the merits. Absent any specific argument from applicant as to why the references are not

combinable (which there is none), the examiner refers applicant to the rejection of record that sets forth a very clear and articulated explanation as to why the claimed invention is obvious and links the references as far as how and why they are combined. Applicant's statement are nothing more than mere allegations that the examiner has not sufficiently explained his position. This kind of argument is not supported by any explanation from applicant and is not persuasive. The applicant is under a burden to explain the errors in the rejection and not just make conclusionary remarks about the rejection and allege that it is not clear enough to be proper. If the rejection is not clear then the examiner suggests explaining what it is that is not clear and why this renders the rejection improper. Applicant's comments are not a real argument on the merits and are not persuasive.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689